IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10547 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD DIST.CO.OP.MILK PRODUCERS UNION LTD.

Versus

AKHIL GUJARAT GENERAL MAZDOOR SANGH

Appearance:

MR SUNIT S SHAH for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/01/2002

ORAL JUDGEMENT

Rule. With the consent of the parties the matter is taken up for final hearing. The present petition is filed by the Ahmedabad Dist. Coop. Milk Producers Union

Ltd. being aggrieved with the judgement and award in Reference (IT) No.175 of 2000 passed by the Industrial Tribunal, Gujarat State, Ahmedabad dated 30th July 2001 whereby the order dated 11.9.1999 by which the respondent workman was asked to work in the Department as 'attendant' was quashed and set aside. Not only that the learned Member of the Industrial Tribunal quashed and set aside the 'warning', 'charge sheet', if any issued pursuant to that order and further if the respondent workman has refused to work as attendant and due to that if the respondent workman had to lose his wages, the same were also ordered to be paid by the petitioner management. The learned Member of the Industrial Tribunal has awarded cost of Rs.6000/-.

2. Learned advocate Mr.Shah appearing for the petitioner, Milk Producers Union pointed out that the Union had passed a Resolution in its Directors' meeting held on 26th May 1990 being Resolution No.l28 whereby the set up of the workforce was decided and a copy of which is produced at page 34. Mr.Shah submitted that last post in the set up is attendant/ worker. There is no post like Peon. Therefore, the insistence of the respondent workman to work only as Peon is unjustified. If any attendant is posted in the office, he has to perform such duties which in local parlance are called to have been performed by a Peon. The petitioner union contends that there is no post with a nomenclature, 'Peon' in the set up. Therefore, there is no question of the respondent workman being appointed as Peon.

3. Mr.Jani, learned advocate for the respondent workman is not able to satisfy that the respondent was appointed as Peon and therefore, when the respondent workman is transferred to Production Department and he is to perform duties as an attendant, he has no justification to refuse the same. Mr.Jani fairly conceded that so far as monetary aspect is concerned, the workman is not a loser as he is to get the same emoluments. Thus, the respondent is creating a dispute about the so called service conditions of Peon just for nothing. Specially when there was no post of Peon there is no question of he being appointed on the post of Peon. His insistence to work as Peon is uncalled for.

4. Mr.Shah, learned advocate for the petitioner union submitted that the petitioner union has always been ready to assign the work as 'attendant' to the respondent workman. It was only the unwillingness on the part of the respondent workman created hurdle in his performing duties as attendant. Now that Mr.Jani, learned advocate

assures that his client will discharge duties as attendant, Mr.Shah submits that if the respondent workman reports for duty with willingness to work as attendant, the petitioner union will permit him to resume as attendant, he may resume on 1.2.2002 and on his so resuming and discharging the duties as attendant the union will pay him regularly.

5. The judgement and award of the Industrial Tribunal is hereby quashed and set aside. The order dated 11.9.1999 is restored. Rule is made absolute to the aforesaid extent. No order as to cost.

(Ravi R. Tripathi, J.)

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